

Week 1 introduction to business law

[Law](#), [Common Law](#)



Week 1 — Introduction to Business Law Explain the nature of law in our society The purpose of laws in our society is as systematic set of rules to control our conduct. These rules are enforced by the courts. It also declares how we must behave. Identify the different ways laws can be classified The numbers of ways that law can be classified are: * International/domestic International laws govern the conduct between nations, also applying to private individuals engaging in international transactions. Two main sources are: * Customary rules of international law * Treaties and conventions (agreements) International treaties and conventions are not part of domestic law unless they are expressed in legislation of the specific nation, in Australia that would be the Commonwealth. The ratification (recognition) of international treaties/conventions fall under the Commonwealth Constitution specifically under external affairs: s 51 (xxix) Domestic or municipal laws originate from statute or case law. It regulates relations between people or organisations within the borders of a state or country. * Public/private Public law deals with the organisation of government and its relationship with the people. Examples are administrative, constitutional, criminal, industrial and taxation. Private law deals with disputes between individuals or organisations. Examples are contract, commercial, torts, property and business entities. * Substantive/procedural Substantive law is the actual rights and duties of individuals and organisations under the law. Whilst Procedural law is involved with the rules of evidence and the conduct of criminals and civil proceedings * Civil law/criminal law The Common law system can be further broken down into civil and criminal law. Civil law is where an action brought by one individual/entity against another. As it

emphasises on remedies the standard of proof required by the plaintiff is to prove the case on the balance of probabilities. Examples of civil law relating to businesses are contract, tort, property, business entities and trusts. Criminal law deals with actions brought by the crown (state/R) against an accused individual and its emphasis is on punishment. In a criminal case the prosecution needs to prove the case beyond reasonable doubt. Examples of business criminals are extortion, embezzlement, larceny/theft, fraud and forgery. Distinguish between the different types of legal systems * Common law/civil law system Common and Civil law are the two dominate legal systems in the western world. The Common law system is based on ' judge-made law', basically relying on previously decided cases (Precedent). On the other hand is the Civil law system (inquisitorial) originating from Roman law, where laws are co-created by judges. Identify the different sources of Australian Law Australia has adopted the English common law system, its main types of laws are: * Statute law Statute law is created by the state and Federal Parliaments. It is also known as legislation, Acts of Parliament and enacted law. Statute law also encompasses laws made by other government bodies; this is known as delegated legislation. It takes form in by-laws, orders and rules and regulations. * Common law Common law is created by the courts/reported decision of the judges. It is also known as case law, precedent and unenacted law. If there is a clash between statute law and common, statute law overrules. * Equity Equity is a body of legal principles/rules developed by the Courts of Chancery (Courts of Equity) in England. It was developed as a result of the growing inflexibility and rigidity of the common courts. Hence England had two parallel court systems: courts

that could only award money damages and courts of ‘ equity’ that could issue a broader range of remedies. The two types of equitable remedies sought are: * Injunction — this is a court order directing a person to stop doing something * Specific Performance — a court order directing a person to carry out an obligation

Give a brief history of Australian Law and the Australian Legal System

Evolution of the Australian Legal System

- * 1770: Captain James Cook
- * 1778: Arrival of the First Fleet

The Doctrine of Reception — Colonies established by England were classified as either Territory acquired by treaty or military victory, hence the existing institutions were retained or Territory that was terra nullius, i. e. the inhabitants were not recognised and English ideas of justice and the English legal system applied.

- * 1823: Court system established in NSW
- * 1828-1853: development of NSW Parliament
- * 1855: NSW Constitution
- * 1865: Colonial Laws Validity Act
- * 1901: Federation The Commonwealth of Australia Constitution Act 1900

- * Effective on 1st January 1901
- * Can only be changed by a referendum (s128) requiring the absolute majority of both houses
- * The six colonies became the Commonwealth of Australia
- * Government was divided in to Federal, State and Local
- * Federal/Commonwealth responsibilities: Defence, Foreign Affairs, Immigration/Customs, Health and Tax
- * State responsibilities: Education, Hospitals/Health, Police/law and order/criminal law, Family Services and Tax
- * Local responsibilities: Road maintenance, Garbage disposal
- * 1931: Statute of Westminster
- * Constitutional Monarchy — Queen’s roles is only ceremonial, she acts on the instruction of the elected Australian Government.
- * Doctrine of the Separation of Powers — Functions of the Government are allocated to different institutions. Parliament is

legislative, the supreme law-maker. Executive, the government and public services. The Judiciary (judges/courts) interprets the law. * Responsible Government —is responsive to public opinion and answerable to the electorate. * 1986: Australia Act — cut legal ties the UK. * 1992: High Court's Mabo decision (Native Title) Originally Australia was ruled as terra nullius which meant no recognition was given to the rights of the indigenous people. However in Mabo v. Queensland (No. 2)(1992) the High Court acknowledged that Australia had not been terra nullius and that common law recognises a form of native title to the land

Week 2 — Legal Reasoning and Statutory Interpretation

The Rule of Law — ensures there is no arbitrary power, everyone is equal before the law and that the rights of citizens are enforceable in the courts.

The Police vs The Courts

The role of the police is to enforce the laws that a created. Whilst the Courts are involved with administration of the law and resolution of disputes.

The Courts

In Australia there is a hierarchy of courts:

- * It provides a system of appeals from decisions of lower courts to higher courts.
- * Original Jurisdiction — the authority to hear a case when it is first brought before a court
- * Appellate Jurisdiction — the authority of a court to hear appeals from decisions of courts of a lower level in the same hierarchy
- * It allows for different forms of hearings based on the gravity/seriousness of the case
- * It is key in building precedent

State Court System

- * Inferior (Magistrate's or local) Courts are the lowest courts, its aim is to settle disputes locally, quickly and cheaply. E. g. parking fines
- * Intermediate (County/District) Courts deals with the bulk of indictable offences except for the more serious crimes
- * Supreme Courts are the highest in each state and are presided over by a Judge. They have

unlimited original jurisdiction in both civil and criminal matters however only hear the most serious cases. Specialist Courts * Family Courts * Drug Courts * Compensation and Work Health Courts * Land and Compensation Courts

Federal Court System The Federal Magistrates Court was established in 2000 in order to ease the workload of other Federal Courts. It is presided over by a magistrate and deals with minor family law, bankruptcy and trade practices.

Family Court established by the Family Law Act 1975 (Cth) it exercises both original and appellate jurisdiction over all matrimonial matters. Federal Court of Australia established by the Federal Court of Australia Act 1976 (Cth) in original jurisdiction hears matters relating to bankruptcy, trade practices, intellectual property and taxation. It hears appeals from Supreme courts and from single judge decisions of Federal Court.